जा.नं. 582/98

(2)

XII-188/(Jail)
C.L.P.R.—5,000-9-81

CF0000060685

APPEAL OF PRISONER

Division Bench (Criminal)

No. 609 Name जूनस राम

Father's name बिकुल राम उराँव

Residence कलिया (सिहरडीह) Age 35 वर्ष

Sentenced to 302 भा.द.वि. on 19/9/97

Under section 302 भादवि by व्यापा० अपर सत्र न्यायाधीश/मोटर यान जशपुरनगर

It is explained to the prisoner that if he states or wishes to be represented by a legal practitioner the Appelate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not be heard at all If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement 19/9/97

2 Date of which copy received 19/9/97

3 Date on which Appeal sent 3/11/97

4 Whether the prisoner wishes to be represented or not – Yes/~~No~~.

Ut No. 609 1/2 Name जूनस राम

Continued in जे.प्र. जशपुरनगर 23/6/97 से लिखित

No. 774 dated 3/11/97 198

Forwarded to the CHIEF JUDICIAL MAGISTRATE RAIGARH

to gather with a copy of judgement or order passed in the case for favour of transmission to the proper Appilliate Court.

Superintendent Central / Sub-Jail

Sub Jail Jashpurnagar

Date of receipt in C. J. M.'S Office 26/12/97

Date of receipt of record to accompany Memo of Appeal of the Appellate Court. 1/1/98

No. Dated 1/1/98 98

Forwarded to the Additional Sessions Judge Raigarh

C.J.Magistrate के. सामन्तरे
मुख्य न्यायिक दण्डाधिकारी
रायगढ़ 1/1/98

Date of receipt in Appliate Court 19-9-97 to 3-11-97

SEP 11 (P.T.O.)
OCT 31
NOV 3

45 - with in time

(16)

HIGH COURT OF CHHATTISGARH AT BILASPUR

DIVISION BENCH: HON'BLE SHRI FAKHRUDDIN AND
HON'BLE SHRI DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO. 582 of 1998

APPELLANT : JUNASRAM

VS.

RESPONDENT : STATE OF MADHYA PRADESH

Present:

Shri S.R.J. Jaiswal, learned counsel for the appellant.
Shri M.P.S. Bhatia with Shri Akhil Mishra, learned Panel Lawyers for the respondent/State.

JUDGMENT
(30.08.2006)

Per Dhirendra Mishra , J

The appellant has preferred this appeal from prison against the judgment dated 19th September 1997 passed by Additional Sessions Judge, Jashpurnagar, Raigarh in Session Trial No. 129/97 and by which the learned Additional Sessions Judge after holding the accused/appellant guilty under Section 302 of the IPC for causing death of Shaniyarobai, sentenced him to undergo imprisonment for life and pay a fine of Rs. 100/-, in default of payment of fine to further undergo S.I. for five days.

2. Allegation against the appellant is that on 26.10.1996 at about 7.00 p.m. in village Sihardand he killed Shaniyarobai in the dwelling house of complainant

Shaniram by assaulting her with axe. Briefly stated facts of the case are that on the date of incident at about 7.00 p.m. when mother of Phuljira namely Shaniyarobai after feeding the children was making them sleep, all of a sudden accused Junas came there armed with axe and seeing him Phuljira ran towards the courtyard and fell on the ground. At that time the accused assaulted her mother Shaniyarobai 2-3 times with axe, as a result of which she died on the spot. Phuljira raised an alarm, her father Shaniram who was returning from the field hearing the shouts of Phuljira came to the house and saw that Shaniyarobai was lying dead and there were incised wounds over her neck and temple. It is also alleged that the accused suspected that Shaniyarobai practiced witchcraft. On the basis of information by Shaniram (PW-2) Dehati Nalishi of Ex.P/8 as also merg intimation of Ex.P/9 were registered. Thereafter, the report of the incident was lodged as per the Dehati Nalishi (Ex.P/8), First Information Report (Ex.P/12) and Rojnamchasanha (Ex.P/13). Prior to lodging of this report the information of the incident was given in the police station vide document of Ex. P.13(C) i.e. the copy of Rojnamchasanha and on the basis of this information the police proceeded for the scene of occurrence and thereafter as per the information of Shaniram, Dehati Nalishi and merg intimation were recorded as detailed above. After conducting inquest of Ex.P/1 over the person of the deceased in the presence of witnesses, the dead body was sent for postmortem examination to Primary Health Centre, Bagicha where Dr. C.D.Wakhla (PW-8) conducted postmortem and submitted his report of Ex.P/6. Plain and bloodstained soil were taken into possession vide Ex.P/2. Weapon of offence i.e. axe was seized from one Bhagturam vide Ex.P/3. The said weapon was sent for examination to the doctor who after examination of the weapon opined that the injuries present over the body of the deceased could be caused by that weapon. However, he

referred the weapon for chemical analysis for blood crystal. Site plan of the place of occurrence was prepared by the investigating officer (PW-9) vide Ex.P/10. A sealed packet containing the bloodstained clothing of the deceased was taken into possession vide Ex.P/11. Seized articles including the clothing of the deceased and weapon of offence were sent for chemical examination to the Forensic Science Laboratory, Sagar from where the report has been received. After completion of the investigation charge sheet was filed in the Court of Judicial Magistrate First Class, Jashpurnagar who in turn committed the case to the Court of Sessions Judge, Raigarh and the same was received on transfer for trial by the learned Additional Sessions Judge, Jashpurnagar. Charge under Section 302 of the IPC was framed against the accused/appellant who abjured his guilt.

3. Prosecution in order to establish the charge against the accused/appellant examined 10 witnesses in all. Thereafter, statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case and pleaded innocence and false implication in the case.

4. The learned Additional Sessions Judge after hearing Additional Public Prosecutor and counsel for the accused, convicted and sentenced the accused/appellant as described above.

5. Homicidal death of deceased Shaniyarobai is not in dispute. Even otherwise from perusal of statement of the Dr. C.D.Wakhla (PW-8) who conducted postmortem over the body of deceased and submitted his report in which he noticed incised wound on the left face extending from mandible bone

up to the back of the ear, bone of the head was fractured, one another injury just below the first injury of size 6 x 2 ½ x 4 cm over left side of the neck and on internal examined found skull bone behind the ear broken, mandible bone of the left portion of the face broken and further opined that the cause of death was due to excessive bleeding and the same was homicidal in nature, the homicidal death of deceased is established.

6. Learned counsel for the appellant submitted that the weapon of offence axe was not seized from the possession of the appellant and the same has been seized from the custody of one Bhaktu who has not been examined during trial. He further submitted that it is a case of false implication and the Court below has committed an illegality in relying upon the statement of the alleged eyewitness namely Phuljir (PW-4).

7. On the other hand, learned counsel for the State/respondent supported the impugned judgment of the trial Court.

8. We have heard learned counsel for the respective parties and perused the material available on record including the impugned judgment of the trial Court.

9. The conviction of the appellant is based on the statement of PW-4 Phuljir, the daughter of the deceased who witnessed the incident. Phuljira has stated in her deposition that on the date of incident it was already sunset, she along with three kids and her mother was in the home and she was sitting near the hearth. At that time accused Junas came there and asked who was she, whereupon she replied that her mother was sleeping. She has further stated that the accused was holding axe and he wanted to assault her, therefore she ran and fell in the courtyard. Thereafter, the accused assaulted her mother with axe over her neck

as a result of which she died instantaneously. She has further stated that at that time her father had gone to the filed, she came out of the house and raised an alarm that accused Junas has killed her mother and she did not know as to why he killed her mother. In the cross examination she has denied this suggestion that her husband demanded land from her mother and she has further denied the suggestion that her father was ready to give the land but her mother was not ready. She has categorically stated that her parents did not hold land. She has denied the suggestion that she had a quarrel with Junas before the incident. She has stated that it is true that she is not on talking terms with Junas. She has admitted that her husband was in the village on the date of incident and police had also interrogated her husband. However, she denied that her husband wanted the land and because of the land related dispute he assaulted her mother and ran away. Thus from the statement of this witness the defence has not been able to elicit anything which makes her statement untrustworthy or unreliable. The statement of this witness is further corroborated by the statement of PW-2 Shaniram, husband of the deceased, who has stated that at about 4.00 p.m. he had gone towards the filed, at that time he heard the shouts of her daughter Phuljira that Junas has killed her mother, on which he came to his home and found his wife lying dead. He stated that his daughter informed him that the accused has killed her mother with axe. The statements of these two witnesses are further corroborated by Dehati Nalishi of Ex.P/8 and merg intimation of Ex.P/9 wherein the complainant has named the appellant as perpetrator of the crime. The statement of PW-4 Smt. Phuljira also finds corroboration from the statement of PW-8 Dr. C.D. Wakhla who has found corresponding injuries over the person of the deceased. Therefore, from the statements of the above

witnesses the involvement of the accused/appellant in the crime in question is established.

10. For the foregoing reasons, we are of the considered opinion that the prosecution has been able to establish the charge against the accused/appellant on the basis of statements of the above witnesses and the Court below has not committed any illegality or infirmity in holding the accused/appellant guilty under Section 302 of the IPC for causing death of Shaniyarobai.

11. In the result, the appeal being devoid of substance deserves to be dismissed and the same is accordingly dismissed.

Sd/-
Fakhruddin
Judge

Sd/-
DHIRENDRA MISHRA
Judge